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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10,005,976	11/08/2001	Leonard C. Buettner	DAM 555-01	6228

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US ARMY SOLDIER AND BIOLOGICAL CHEMICAL COMMAND  
OFFICE OF THE CHIEF COUNSEL/IP TEAM (BLDG E4435)  
5183 BLACKHAWK ROAD  
APG, MD 21010-5424

EXAMINER

NOLAND, THOMAS

ART UNIT PAPER NUMBER

2856

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/665,976

Applicant(s)

Buehner

Examiner

Tom N. Leland

Group Art Unit

2852

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

3

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3/24/05
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-10 and 21-28 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-10 and 21-28 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☒ The drawing(s) filed on 11/8/01 is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. Applicant's election without traverse of the invention of group 1, claims 1-10 and 21-28 in Paper No. 3, filed March 26, 2003 is acknowledged.

2. The restriction requirement is made final.

3. The amendment filed March 26, 2003 canceling the nonelected claims has been entered.

4. The drawings are objected to because in Fig. 1 box element 20, 8 and 6 should be respectively legended ---Inert Gas Source---; --. Moisture Trap ---and--- Filter---. In Fig. 2 box 33 should be legended --Pump--. In Fig. 3 box 25 should be legended ---Chemical Vapor Detector---. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 10 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Limitations such as "and/or" as in line 4 of claims 10 and 27 render the claim non specific.

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8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 21-22 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gesteland US 4,388,272.

Note abstract and Figs. 1-4. It is believed the adsorbate would have a vapor pressure of at least the minimum claimed.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gesteland in view of Ong US 5,728,927 cited in the specification of this application.

Gesteland does not disclose the particular adsorbate claimed but clearly such would have been an obvious expedient when that was the material desired to be monitored and in view of the teaching of calibration of similar such systems with such in claim 16 of Ong.

12. Claims 1-4, 7-10 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gesteland in view of Weis et al EP 816845.

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Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gesteland in view of Weis et al as applied to claim 1 above, and further in view of Ong.

Gesteland does not teach the use of an inert gas as claimed other than the implicit use of air. However such would have been an obvious expedient to provide better control during calibration and in view of the teaching of such a use of an inert gas in the similar calibrator of Weis et al. It is considered to be within the ordinary skill of the worker in the art to attach the calibrator to the analyzer being claimed in view of its intended use. Ong is applied as in paragraph 11 above.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references show gas generators and/or calibrators.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Noland whose telephone number is (703) 305-4765. The examiner can normally be reached on weekdays from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hezron E. Williams, can be reached on (703) 305-4705.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

*06/10/03*  
**Thomas P. Noland**  
**Primary Examiner**  
**Art Unit 2856**

*Tom Noland*

Noland/ek  
06/10/03